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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Revision of the Commission's Rules To)
Ensure Compatibility with Enhanced)
911 Emergency Calling Systems)
)

CC Docket No. 94-102

To: Wireless Telecommunications Bureau

**REQUEST OF STPCS JOINT VENTURE, LLC FOR A LIMITED WAIVER OF
SECTION 20.18(d) OF THE COMMISSION'S RULES**

STPCS Joint Venture, LLC d/b/a SOL Communications ("STPCS"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's rules, hereby requests a limited waiver of Section 20.18(d) of the Commission's rules regarding Phase I deployment of enhanced 911 service ("E-911").

I. Preliminary Statement

STPCS is a small business provider of personal communications services in seven rural markets in South Texas (specifically, the Brownsville-Harlingen, Corpus Christi, Eagle Pass-Del Rio, Laredo, McAllen, and Victoria, Texas Basic Trading Areas ("BTAs")), utilizing GSM technology. STPCS has satisfied the five-year construction benchmark for each BTA for which it holds a license – well in advance of the five-year construction deadline for these markets.

On January 26, 2000, the Texas Commission on State Emergency Communications ("TX-CSEC") contacted STPCS and requested, pursuant to Section 20.18(d) of the

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Commission's rules,¹ that STPCS implement Phase I E-911 service by July 28, 2000. Upon receipt of TX-CSEC's request, STPCS immediately began the process of implementing Phase I E-911 service within its service areas.

Despite STPCS's diligent efforts to meet the requested implementation date, and despite significant progress toward achieving Phase I E-911 service by that date, STPCS has not yet completed implementation. STPCS currently projects that implementation will be completed within 30 days. As set forth below, STPCS's inability to meet the implementation deadline has been due primarily to necessary reliance on third parties over whom STPCS has little or no control. STPCS therefore requests a limited waiver, to the extent necessary, of Section 20.18(d) to provide an extension of time, to December 15, 2000, while STPCS coordinates the remaining steps that must be completed for it to begin Phase I E-911 service in Texas. STPCS remains fully committed to providing this important service as quickly as possible and expects to be Phase I compliant by December 15, 2000.

II. Unique Circumstances and the Public Interest Support Grant of the Requested Limited Waiver

The Commission may grant a rule waiver if the petitioner for good cause shows that either (1) the underlying purpose of the rule would not be served or would be frustrated by application of the rule to the instant case, and that a grant of waiver would be in the public interest, or (2) there exist unique or unusual factual circumstances that would make application

¹ Section 20.18(d)(1) states: "As of April 1, 1998, or within six months of a request by the designated Public Safety Answering Point as set forth in [47 C.F.R. § 20.18(j)], whichever is later, licensees subject to this section must provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI."

of the rule inequitable, unduly burdensome, or contrary to the public interest, or if the applicant has no reasonable alternative.²

In addition, the Commission has recognized that waiver of the E-911 rules in particular may be appropriate due to the technical complexity of implementing emergency dialing services in a mobile environment, stating that “there could be instances where technology-related issues or exceptional circumstances may mean that deployment . . . may not be possible by [the established deadline].”³ The Commission has indicated that such cases “be dealt with through individual waivers as these implementation issues are more precisely identified.”⁴

This request satisfies the requisite waiver criteria.

A. STPCS Has Diligently Pursued Timely E-911 Deployment

As STPCS has learned, implementing Phase I E-911 service requires not only that a carrier who is subject to E-911 obligations be fully committed to implementing the service and work diligently toward that goal, but also that substantial coordination by the carrier with various parties who are not subject to the Commission’s rules is required. Notwithstanding a carrier’s intentions to comply with a service implementation date requested by a Public Safety Answering Point (“PSAP”), that carrier’s efforts may be slowed by its reliance on third parties. Such reliance is a unique circumstance that complicates E-911 rollout. In STPCS’s case, the third

² See 47 C.F.R. § 1.925(b)(3)(i) and (ii).

³ *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18710, at ¶ 66 (1996); *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, FCC 00-326, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, at ¶ 43 (rel. Sept. 8, 2000) (granting waiver of Phase II E-911 rules) (“*Fourth MO&O*”).

⁴ *Id.*

parties included the E-911 infrastructure vendor in Texas, the local Texas Councils of Government, STPCS's equipment vendor, and the incumbent local exchange carrier ("ILEC"). While STPCS does not question the good faith of these parties, it is apparent that in these circumstances STPCS could not achieve compliance solely through its own actions.

TX-CSEC made its original request that STPCS begin its Phase I rollout on January 26, 2000. During February, STPCS downloaded model Phase E-911 Service Agreements from TX-CSEC's Internet site, forecast the costs of implementing E-911 within the STPCS network, and drafted Schedules and Tables for the Agreement, providing a cost model and explaining the costing methodology. On March 20, STPCS submitted its executed Agreements to TX-CSEC for execution on behalf of the local Councils of Government. Despite verbal assurances, TX-CSEC still has not yet signed and returned the Agreements to STPCS. Therefore STPCS remains uncertain whether Texas will reimburse STPCS for the costs of implementing E-911.

Upon receipt of the request from TX-CSEC, STPCS also contacted SCC Communications Corp. ("SCC") and began negotiating a contract with SCC for its services. SCC manages the data that allows 911 calls to be routed to the appropriate answering point and delivers information about the caller's location. In February 2000, SCC was selected by the TX-CSEC as its E-911 database provider to be the exclusive vendor for creating and servicing E-911 infrastructure in Texas. STPCS compared several service providers and determined that SCC, due in part to its unique relationship with the TX-CSEC, would provide the widest range of services at what appeared to be the lowest price.

STPCS initiated contract negotiations with SCC for Phase I deployment services. SCC then informed STPCS that STPCS would need certain services in addition to those SCC normally provides under its contract with the State of Texas. These additional services, which

STPCS was not in a position to efficiently provide for itself, would result in additional deployment costs to STPCS (and to TX-CSEC, pursuant to state cost recovery mechanisms provided it met certain conditions mandated by the Texas state legislature). In addition, throughout STPCS's negotiations with SCC, STPCS was under the impression, based on its understanding of SCC's pricing methodology, that Phase I rollout could be accomplished in a single deployment for STPCS's markets. On June 22, 2000, however, SCC informed STPCS that, based upon further analysis of STPCS's transmitter site locations, four separate deployments would likely be necessary, and that the contract price could increase four-fold. As a result of this unforeseen circumstance, STPCS was forced to renegotiate the contract. Aware that this would consume additional time, STPCS contacted TX-CSEC, which informally encouraged STPCS to attempt to negotiate reduced pricing. After nearly daily communications from STPCS and the intervention of STPCS's Vice President of Engineering, SCC revised its deployment estimate. This enabled STPCS to secure a significantly lower price for SCC's services (which ultimately should benefit TX-CSEC). STPCS entered into a contract with SCC on July 13, 2000.

During its negotiations with SCC, STPCS contacted its system infrastructure and handset vendor, Nokia, to discuss E-911 implementation. STPCS had believed prior to purchasing the switch that it already was E-911 compatible. On April 19, 2000, STPCS personnel met with Nokia representatives at the STPCS Mobile Switching Center ("MSC") in Corpus Christi, Texas. During that meeting, STPCS became aware for the first time that the MSC would require a software upgrade in order to be E-911 compatible. STPCS immediately requested a price quote for this upgrade and placed an order for the upgrade soon after completing negotiations.

In May 2000, Southwestern Bell, the ILEC for STPCS's service areas, informed STPCS that in order to accommodate STPCS's trunk orders, it would need significant additional information. STPCS immediately provided the additional information to Southwestern Bell, and also to Nokia. Nokia informed STPCS and SCC in July 2000 that it was unable to perform the needed network architecture solution for Phase II (i.e., NCAS).⁵ The companies therefore worked together to ensure that there would still be a feasible Phase I architecture (CAS) in the short term, and that in the longer term, Nokia would be able to provide an upgrade to an optimum solution for Phase II. In late July 2000, SCC sent Nokia the voluminous cell site information required for the Phase I solution, and Nokia performed its initial translations work in early August.

While the efforts described above were occurring, STPCS kept TX-CSEC apprised of the situation and of the fact that STPCS's deployment was being slowed by third-party delays. For example, as noted above, STPCS immediately informed TX-CSEC when SCC advised STPCS that a four-phase deployment would be required, as would a renegotiated price. In addition, STPCS personnel attended a TX-CSEC meeting on August 3, 2000, in Austin, Texas. At that meeting, SCC presented its Phase I Exhibits (technical forms which Southwestern Bell require wireless carriers to submit before Southwestern Bell will process trunk orders) to TX-CSEC, STPCS and Southwestern Bell for review.

On August 25, 2000, STPCS received from SCC the final, signed Phase I Exhibits required by Southwestern Bell, and placed expedited trunk orders on the same day. On August

⁵ The Commission is aware of the difficulties another GSM carrier, VoiceStream Wireless Corporation, has faced in implementing Phase II E-911 service.

30, 2000, STPCS requested that Southwestern Bell further expedite the trunk orders. Southwestern Bell subsequently informed STPCS that the earliest installation dates would be September 12 and September 15, 2000. Some of the trunk orders were not provisioned until October 24, and the only after numerous escalations. Southwestern Bell just completed installation of one of the trunk orders on October 31, 2000 – more than one month after the order was placed.

In the meantime, STPCS has re-homed its entire network to make more efficient use of its channels, and SCC has re-performed certain calculations and retransmitted the Phase I Exhibits to the local Councils of Government for approval, which is expected shortly. The network re-homing also has required that Nokia re-do its translations, which also is expected to be completed shortly. Upon delivery of the final trunk, STPCS will be prepared to test all of its circuits for Phase I E-911 capability and, assuming testing is successful, to implement Phase I service. STPCS believes these final steps can be completed within 30 days.

B. Grant of the Waiver Request Will Serve the Public Interest

In adopting Section 20.18(d), the Commission facilitated the laudable goal of providing emergency service to all mobile users as quickly as feasibly possible. STPCS has fully supported this mandate. The six-month response time codified in Section 20.18(d)(1), however, could not have taken into account the need for each carrier to engage in the substantial negotiation and coordination with third parties that STPCS has experienced. Like many carriers, STPCS has a small in-house engineering staff and therefore purchased E-911 services from an outside specialist. STPCS was encouraged by TX-CSEC to negotiate pricing with that specialist. Moreover, STPCS has been subjected to unforeseen delays from local Councils of Government and Southwestern Bell. Although STPCS diligently fulfilled these entities' information requests,

its conscientious provision of information to them did not prevent delays by those parties. Both STPCS and SCC have sent these entities numerous messages attempting to escalate and expedite their actions, often to no avail.

STPCS is devoting substantial resources to accomplishing Phase I E-911 compliance, and expects to be compliant in the near future. As a result, the circumstances faced by STPCS constitute precisely the type of unique factual difficulties envisioned by the Commission's rules. Penalizing STPCS for failing to meet the six-month deadline triggered by the TX-CSEC's request would fail to take into account STPCS's unique circumstances and would not promote the public interest purposes of the Phase I rules. STPCS is a small competitor in the South Texas wireless market, whose prices would be directly affected by any penalties.

Further, forcing STPCS to rush into use a service that has not been fully tested would be inefficient and unwise in light of public safety considerations. STPCS already forwards 911 calls to local PSAPs, indicating the cell site within whose range the subscriber's handset transmitted the 911 call. In light of this working system that STPCS has implemented for completing emergency calls, STPCS would prefer to complete a thorough testing process once it received the signed Exhibits back from the COGs, rather than potentially risking public safety with a premature cut-over to the new E-911 system using the ILEC's selective routers.

As noted, STPCS anticipates that its Phase I compliance efforts will be completed in approximately 30 days. Final approval from all of the Councils of Government in STPCS's service areas is expected within one week. At that point, only trunk provisioning and testing remains. While STPCS cannot be certain of how long testing will take to complete, it commits to diligently work with Nokia and SCC to complete testing as soon as possible.

While the Commission has made clear that it envisions prompt deployment of E-911 service, it also has recognized that the individual circumstances of each carrier may vary.⁶ Further, the Commission has recognized that its rules must be interpreted flexibly to avoid placing unreasonable burdens on carriers.⁷ STPCS reiterates that it plans to be Phase I compliant by December 15, 2000, barring further unforeseen delays by third parties. While STPCS remains committed to accomplishing Phase I deployment as soon as possible, it simply was not reasonably feasible for it to do so within the time frame requested by TX-CSEC. The purpose of Section 20.18(d) – prompt, reliable E-911 deployment – would not be furthered by strict application of the rule in these circumstances.

C. CSEC's Legislative Deadline Is Not Fairly Attributed to STPCS

STPCS is fully aware of and empathizes with the daunting task faced by TX-CSEC. The Texas legislature mandated that Phase I implementation reach a certain threshold in Texas by August 31, 2000, at the risk of a reduction in funding for TX-CSEC. It appears that the risk of loss of funding may have played a significant part in propelling TX-CSEC to ask for Commission oversight of Phase I efforts, and for the possible imposition of penalties against providers such as STPCS.⁸

⁶ See *Fourth MO&O*, at ¶ 56.

⁷ See 47 C.F.R. § 20.18(j) (recognizing that E-911 deployment need not be performed before the Public Service Answering Point is capable of receiving and utilizing the data elements).

⁸ See Emergency Petition of the Texas Commission on State Emergency Communications for FCC Compliance Oversight Regarding the Six-Month Deadline for Implementation of Wireless E9-1-1 Phase I Service And Conditional Petition for Maximum Sanctions against Carriers for Violations of the FCC's Wireless E9-1-1 Rules Related to those Wireless Carriers Not Operational by August 31, 2000, CC Docket No. 94-102; Texas Commission on State Emergency Communications' Emergency Petition for FCC Compliance Oversight and Conditional Petition for Maximum Sanctions, filed July 11, 2000.

While STPCS understands TX-CSEC's request for sanctions in light of the enormous legislative pressure it faced, this should not be a factor in considering STPCS's waiver request. As STPCS has made clear, it has worked without delay to timely provision Phase I E-911 service. Further, it has kept TX-CSEC informed of its progress. As the Commission (and TX-CSEC) is well aware, however, E-911 provisioning requires the coordination and cooperation of many third parties, including SCC, Southwestern Bell, Nokia, the local government agencies, and TX-CSEC itself, none of which is individually required to comply with Section 20.18(d). STPCS simply has no control over most of these third parties and cannot force them to perform more quickly. Moreover, Texas is one of the first states within which E-911 has been implemented, and GSM technology for E-911 in particular is very difficult to place in operation (as evidenced by the recent waiver the Commission granted to VoiceStream Wireless Corporation).⁹ Thus, while STPCS fully understands TX-CSEC's concerns, such concerns are not fairly attributed to STPCS, which has worked diligently to meet the deadline.

III. Conclusion

Section 20.18(d) requires a carrier to be Phase I compliant within six months of a request from a local agency. STPCS began its compliance efforts immediately upon request of the TX-CSEC. As a result of prolonged negotiations with, and provisioning delays by, third parties over whom STPCS has no control, STPCS has not yet achieved Phase I compliance, although it expects to do so shortly. Because penalizing STPCS would not serve the purpose of Section

⁹ The Commission recently granted a waiver to VoiceStream Wireless Corporation in connection with its Phase II deployment because VoiceStream's Global System for Mobile Communications ("GSM") technology presents unique technical challenges. See *Fourth MO&O* at ¶¶ 56-67. Like VoiceStream, STPCS uses GSM technology.

20.18(d), and because STPCS, a GSM carrier, seeks only a limited waiver to enable it to fully and safely install and test its system before claiming it is Phase I compliant, a grant of this request is justified.

WHEREFORE, STPCS Joint Venture, LLC respectfully requests that the Commission grant this request for a waiver of Section 20.18(d) and extend until December 15, 2000 the time within which STPCS must provide Phase I E-911 capabilities to PSAPs within the jurisdiction of the TX-CSEC.

Respectfully submitted,

STPCS JOINT VENTURE, LLC

By: 
E. Ashton Johnston

Scott M. Perry

PIPER MARBURY RUDNICK & WOLFE LLP

1200 19th Street, N.W.

Washington, DC 20036

(202) 861-3900

November 3, 2000

Its Attorneys

CERTIFICATION

I, Julia K. Tanner, hereby certify that I am an authorized representative of STPCS Joint Venture, LLC d/b/a SOL Communications, that I have read the foregoing Request for Waiver of Section 20.18(d) of the Commission's Rules, that I have personal knowledge of the facts set forth therein, and that the facts set forth therein are true and correct to the best of my knowledge, information and belief.

Signed: _____



Name: Julia K. Tanner

Title: V.P. / General Counsel

Date: _____

November 2, 2000

CERTIFICATE OF SERVICE

I, Jennifer A. Short, hereby certify that on this 3rd day of November, 2000, I caused to be served a copy of the foregoing Request of STPCS Joint Venture, LLC for a Limited Waiver of Section 20.18(d) of the Commission's Rules by U.S. first-class mail, or by hand delivery as indicated with an *, to the following persons:

Thomas J. Sugrue, Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 3C-207
Washington, DC 20554

Blaise Scinto, Deputy Chief*
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Cindy Reed, Auditor Manager
Texas State Auditor's Office
Robert E. Johnson Building
1501 North Congress Avenue, Suite 4.224
Austin, Texas 78701

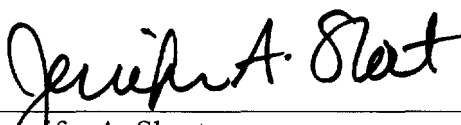
Rupaco T. Gonzalez, Jr.
Richard A. Muscat
The Gonzalez Law Firm
One Westlake Plaza, Suite 100
1705 South Capital of Texas Highway
Austin, Texas 78746

Kris Monteith, Chief*
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

James D. Schlichting, Deputy Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

James Georke, Executive Director
Texas Commission on State
Emergency Services
333 Guadalupe Street, Suite 2-212
Austin, Texas 78701

ITS*
445 12th Street, SW
Washington, DC 20554



Jennifer A. Short